datory by the law itself. *State v. Van Camp,* 36 Nebr., 91; *De Berry v. Nicholson,* 102 N. C., 465. And so, in general, the courts hold statutes regarding the marking of ballots directory only, and construe them liberally, giving effect, as far as possible, to the voter's intention. *Parker v. Orr,* 158 Ill., 609; *State v. Elwood,* 12 Wis., 551. For instance, a Latin or a Greek cross may be used under a statute requiring ballots to be marked with "a cross—for example an (X)." *Coulehan v. White,* 95 Md., 703. But two parallel horizontal lines will not suffice for a cross. *Chistopherson v. Manister,* 117 Mich., 125. A statute specifying that black ink be used is sufficiently complied with by using a pencil or ink of any color. *Houston v. Steele,* 98 Ky., 596; *Contra, People v. Bourke,* 30 Misc. (N. Y.), 461. Furthermore, according to some authorities, a ballot marked at the wrong side of the candidate's name should be counted. *Mauck v. Brown,* 59 Nebr., 382; *State v. Fawcett,* 17 Wash., 188. *Contra, Curran v. Clayton,* 86 Me., 42; *McKittrick v. Pardee,* 8 S. D., 39.

EMINENT DOMAIN—DAMAGES—TIME OF ASSESSMENT—ENHANCEMENT OF VALUE BY IMPROVEMENT.—UNITED STATES V. CERTAIN LANDS IN TOWN OF NARRAGANSETT, 180 FED., 260.—*Held,* that where the government, before instituting condemnation proceedings by the filing of a petition, had practically completed the end of a breakwater adjoining claimant's property, thus creating, under the shelter of the breakwater, a wharf site, which was taken away by the subsequent condemning of part of the upland adjacent to the alleged wharf site, the rule that damages are to be assessed as of the date of condemnation did not apply, so as to entitle the owner of the upland to damages as of the date of condemnation, and as enhanced by the wharf site, created by the work; it being certain from the beginning of the work that the upland would be condemned, and the alleged wharf site not being available as such without the approval of the Secretary of War, which could not reasonably be expected in view of the location of the government improvements.

In *May v. City of Boston,* 158 Mass., 21, a case directly in point, it is said, "Where damages for land taken under a statute for the purposes of a public park are to be estimated, as in cases of laying out, altering or widening highways under the Public Statutes, 51, § 3, which provides that the damages shall be fixed at the value of the land before such laying out, alteration or widening; the owner is to be compensated by the payment of the fair value at the time of the taking. It is the purpose of the Legislature not to permit owners to recover damages at a value enhanced by a public improvement which owes its existence to the change of use of the very land to be paid for." But in *Harlan v. Hogsett,* 60 Nebr., 362, it is said that damages for lands appropriated for a highway accrue at the date of the taking without regard to the time when the road is actually opened. This may be taken as the general rule. *Bauman v. Ross,* 167 U. S., 548; *Benedict v. City of New York,* 98 F., 789; *Southern Ry. Co. v. Cowan,* 129 Ala., 577. However, in *Mavory v. City of Boston,* 193 Mass., 425, it is said, "The owner of land taken for public use cannot recover therefor an enhanced value which it has acquired merely by reason of the taking, or as the result of the improvement which the taking of that particular

land for the specific purposes for which it is taken contemplates; for in the very nature of things its appropriation is a condition precedent to the existence of the improvement, and it cannot share in the effect of the change to create which it must be used."

HOMICIDE—EVIDENCE—CONDUCT OF ACCUSED.—STATE V. LEO, 77 ATL., 523 (N. J.).—*Held,* that evidence that accused, in a prosecution for killing his wife, at the time of her funeral looked on her dead body, touched and kissed it, was inadmissible to show the existence of love for her during life.

Upon a trial for murder, the prevalent rule is that evidence tending to show the accused's feelings toward the person killed is admissible, to show a motive for the crime. *People v. Kern,* 61 Cal., 244. So on the prosecution of a man for the murder of his wife, it is proper to show the character of the relations between them. *Siberry v. State,* 39 N. E. (Ind.), 936. This may be done by showing the pendency of a divorce action, *Binns v. State,* 57 Ind., 46, or by proof of the adultery of accused and another, *St. Louis v. State,* 8 Nebr., 405. By analogy to the rule of a declaration against interest, the conduct of accused and another female on the day of the burial may be shown. *State v. Hinkle,* 6 Clarke (Ia.), 380. Also, that on the day after the homicide, defendant shed no tears, and was indifferent. *Greenfield v. People,* 85 N. Y., 75; *semble, People v. Bemis,* 51 Mich., 422. But it has been held that statements made by accused to third persons after the homicide are not admissible as evidence in his own behalf. *State v. Talbert,* 41 S. C., 526. However, statements in his own interest, and by analogy, his conduct, three or four minutes after he had shot deceased, are admissible, as part of the *res gestae. Harrison v. State,* 20 Tex. App., 387.

INDEMNITY—CONTRACT—WHAT CONSTITUTES.—HILLIARD V. NEWBERRY ET AL., 68 S. E., 1056 (N. C.).—*Held,* that a bond to indemnify plaintiff against any damage he may suffer by reason of a mortgage on land, which was also a promise to pay a certain sum by a certain date, was not strictly a contract of indemnity.

Indemnity may be defined as the obligation or duty resting on one person to make good any loss or damage another has incurred while acting at his request or in his behalf; *Vandiver v. Pollak,* 107 Ala., 547, and differs from contracts to pay a certain sum of money or to do a certain act in that, the case of a bond or contract conditioned to indemnify damage must be shown before the party indemnified is entitled to recover, whereas, a cause of action accrues on a bond or contract to do a certain act as soon as there is a default in performance, whether the obligee or promisee has suffered damage or not. *Northern Assurance Co. v. Borgelt,* 67 Nebr., 282; *Henderson-Achart Lith. Co. v. Shillito,* 64 Ohio St., 236. It is undoubtedly true, as a general proposition, that in order to recover upon a bond or agreement to indemnify and save harmless, actual damage must be proved and shown. *Churchill v. Hunt,* 3 Denio (N. Y.),